

Department of Energy

§ 626.5

impacts from market participation, DOE shall review the following factors prior to commencing acquisition of petroleum for the SPR:

- (1) The current inventory of the SPR;
- (2) The current level of private inventories;
- (3) Days of net import protection;
- (4) Current price levels for crude oil and related commodities;
- (5) The outlook for international and domestic production levels;
- (6) Existing or potential disruptions in supply or refining capability;
- (7) The level of market volatility;
- (8) Futures market price differentials for crude oil and related commodities; and
- (9) Any other factor the consideration of which the Secretary deems to be necessary or appropriate.

(b) *Review of rate of acquisition.* DOE shall review the appropriate rate of oil acquisition each time an open market acquisition has been suspended for more than three months, and every six months in the case of ongoing or suspended royalty-in-kind transfers.

(c) *Acquisition through other Federal agencies.* DOE may enter into arrangements with another Federal agency for that agency to acquire oil for the SPR on behalf of DOE.

§ 626.5 Acquisition procedures—general.

(a) *Notice of acquisition.* (1) Except when DOE has determined there is good cause to do otherwise, DOE shall provide advance public notice of its intent to acquire petroleum for the SPR. The notice of acquisition is usually in the form of a solicitation. DOE shall state in the notice of acquisition the general terms and details of DOE's crude oil acquisition and, to the extent feasible, shall inform the public of its overall fill goals, so that they may be factored into market participants' plans and activities.

(2) The notice of acquisition generally states:

- (i) The method of acquisition to be employed;
- (ii) The time that the solicitations will be open;
- (iii) The quantity of oil that is sought;

(iv) The minimum crude oil quality requirements;

(v) The acceptable delivery locations; and

(vi) The necessary instructions for the offer process.

(b) *Method of acquisition.* (1) DOE shall define the method of crude oil acquisition, direct purchase or royalty-in-kind transfer and exchange, in the notice of acquisition.

(2) DOE shall determine the method of crude oil acquisition after taking into account the availability of appropriated funds, current market conditions, the availability of oil from the Department of the Interior, and other considerations DOE deems to be relevant.

(c) *Solicitation.* (1) To secure the economic benefit and security of a diversified base of potential suppliers of petroleum to the SPR, DOE shall maintain a listing, developed through online registration and personal contact, of interested suppliers. Upon the issuance of a solicitation, DOE shall notify potential suppliers via their registered e-mail addresses.

(2) DOE shall make the solicitation publicly available on the Web sites of the DOE Office of Fossil Energy <http://www.fe.doe.gov/programs/reserves> and the OPR <http://www.spr.doe.gov>.

(d) *Timing and duration of solicitation.* (1) DOE shall determine crude oil requirements on nominal six-month cycles, and shall review and update these requirements prior to each solicitation cycle.

(2) DOE may terminate all solicitations and contracts pertaining to the acquisition of crude oil at the convenience of the Government, and in such event shall not be responsible for any costs incurred by suppliers, other than costs for oil delivered to the SPR and for reasonable, customary, and applicable costs incurred by the supplier in the performance of a valid contract for delivery before the effective date of termination of such contract. In no event shall the Government be liable for consequential damages or the contractor's lost profits as a result of such termination.

(e) *Quality.* (1) DOE shall define minimum crude oil quality specifications for the SPR. DOE shall include such

specifications in acquisition solicitations, and shall make them available on the Web sites of the DOE Office of Fossil Energy <http://www.fe.doe.gov/programs/reserves> and the OPR <http://www.spr.doe.gov>.

(2) DOE shall periodically review the quality specifications to ensure, to the greatest extent practicable, the crude oil mix in storage matches the demand of the United States refining system.

(f) *Quantity.* In determining the quantities of oil to be delivered to the SPR, DOE shall:

(1) Take into consideration market conditions and the availability of transportation systems; and

(2) Seek to avoid adversely affecting other market participants or crude oil market fundamentals.

(g) *Offer and evaluation procedures.* (1) Each solicitation shall provide necessary instructions on offer format and submission procedures. The details of the offer, evaluation and award procedures may vary depending on the method of acquisition.

(2) DOE shall use relative crude values and time differentials to the maximum extent practicable to manage acquisition and delivery schedules to reduce acquisition costs.

(3) DOE shall evaluate offers based on prevailing market prices of specific crude oils, and shall award contracts on a competitive basis.

(4) Whether acquisition is by direct purchase or royalty transfer and exchange on a term contract basis, DOE shall use a price index to account for fluctuations in absolute and relative market prices at the time of delivery to reduce market risk to all parties throughout the contract term.

(h) *Scheduling and delivery.* (1) Except as provided in paragraph (h)(4) of this section, DOE shall accept offers for crude oil delivered to specified SPR storage sites via pipeline or as waterborne cargos delivered to the terminals serving those sites.

(2) Except as provided in paragraph (h)(4) of this section, DOE shall generally establish schedules that allow for evenly spaced deliveries of economically-sized marine and pipeline shipments within the constraints of SPR site and commercial facilities receipt capabilities.

(3) DOE shall strive to maximize U.S. flag carrier utilization through the terms of its supply contracts.

(4) DOE reserves the right to accept offers for other methods of delivery if, in DOE's sole judgment, market conditions and logistical constraints require such other methods.

§ 626.6 Acquiring oil by direct purchase.

(a) *General.* For the direct purchase of crude oil, DOE shall, through certified contracting officers, conduct crude oil acquisitions in accordance with the FAR and the DEAR.

(b) *Acquisition strategy.* (1) DOE solicitations:

(i) May be either continuously open or fixed for a period of time (usually no longer than 6 months); and

(ii) May provide either for prompt delivery or for delivery at future dates.

(2) DOE may alter the acquisition plan to take advantage of differentials in prices for different qualities of oil, based on a consideration of the availability of storage capacity in the SPR sites, the logistics of changing delivery streams, and the availability of ships, pipelines and terminals to move and receive the oil.

(3) Based on the market analysis described in paragraph (d) of this section, DOE may refuse offers or suspend the acquisition process on the basis of Government estimates that project substantially lower oil prices in the future than those contained in offers. If DOE determines there is a high probability that the cost to the Government can be reduced without significantly affecting national energy security goals, DOE may either contract for delivery at a future date or delay purchases to take advantage of projected future lower prices. Conversely, DOE may increase the rate of purchases if prices fall below recent price trends or futures markets present a significant contango and prices offer the opportunity to reduce the average cost of oil acquisitions in anticipation of higher prices.

(4) Based on the market analysis described in paragraph (d) of this section, DOE may refuse offers, decrease the